## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:07CR403
Plaintiff,	)	)
vs.	)	TENTATIVE FINDINGS
BRANDON WALKER,	)	
Defendant.	)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 31). The government has adopted the PSR. (Filing No. 32.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 94 of the PSR that includes the probation officer's statement that the Defendant's criminal history is under represented in light of his tribal convictions. The Defendant argues that the PSR does not include reliable information regarding the tribal convictions and therefore the Court is unable to "lay out its reasoning and analysis as to why it might select a particular degree of departure."

The Defendant has not objected to specific paragraphs of the PSR that reflect the Defendant's tribal convictions. The probation officer is required to state factors that she believes might warrant departure, up or down, from the guideline range. Absent objections

<sup>&</sup>lt;sup>1</sup>The Defendant, in objecting, refers to the draft PSR rather than to the final version. Therefore, the paragraph number referred to by the Court differ from the number referred to in the Defendant's objections. In the future, counsel is advised to object to the final version of the PSR.

to particular prior convictions, the Court is unable to adequately address the objection

made. The objection to ¶ 94 is denied.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing

No. 31) are denied;

2. Otherwise the Court's tentative findings are that the Presentence

Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall

immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are

required (giving due regard to the requirements of the local rules of practice respecting the

submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and

an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order,

my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings

shall be resolved at sentencing.

DATED this 24th day of April, 2008.

BY THE COURT:

s/Laurie Smith Camp

United States District Judge

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